

NO. 83-1306

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALTON CLARK BINGHAM,

Petitioner,

v.

NEVADA STATE BOARD OF ACCOUNTANCY,

Respondent,

SUPPLEMENTARY APPENDIX TO PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEVADA

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APPENDIX A

In the Supreme Court of the State of Nevada

ALTON CLARK BINGHAM,
Appellant,

vs.

NEVADA STATE BOARD OF
ACCOUNTANCY,
Respondent.

No. 14311

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).
It is so ORDERED.

/s/ Manoukian, C.J.

/s/ Springer, J.

/s/ Mowbray, J.

/s/ Steffen, J.

/s/ Gunderson, J.

cc: Hon. Robert G. Legakes, District Judge
William B. Terry
Thomas J. Ray
Loretta Bowman, Clerk

APPENDIX "B"

**STATE OF NEVADA
Before the
NEVADA STATE BOARD OF ACCOUNTANCY**

Case No. 149

**NEVADA STATE BOARD OF
ACCOUNTANCY,**
Complainant,

vs.

ALTON CLARK BINGHAM,
CERTIFIED PUBLIC
ACCOUNTANT
Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION**

This matter coming on for hearing on Monday, December 10, 1979, at 11:50 o'clock a.m. before the Nevada State Board of Accountancy, at the conference room at Laventhal & Horwath, 714 South Fourth Street, Las Vegas, Nevada, upon the Complaint and Order to Show Cause and the Notice of Hearing which were mailed to Respondent by certified mail, return receipt requested, on September 14, 1979 and a copy was personally served on Respondent on September 17, 1979. Present at the hearing were: Board member, John F. Rhodes, Jr., C.P.A., who presided over the hearing; Board

Secretary-Treasurer, Lola F. Farmer, P.A.; and Board members: William R. Ernst, C.P.A.; Merlin J. Jones, C.P.A.; and Mary O. Knapp, C.P.A. Board President, C. William Geyer, C.P.A., and Board member Robert T. Ashworth, C.P.A., disqualified themselves and the Respondent stipulated to allow the five remaining Board members to comprise the Board and hear the full matter. Melvin Brunetti, Esq., of Allison, Brunetti, MacKenzie & Taylor, appeared as counsel for the Board, and the Respondent, Alton Clark Bingham, C.P.A. appeared and testified in his own behalf and was represented by his counsel William B. Terry, Esq., and Martin J. Kravitz, Esq., of Goodman, Oshins, Brown and Singer, Chartered. Court reporters of Brower and Associates, Las Vegas, Nevada, were present to record the proceedings. The hearing proceeded through December 10 and 11, 1979, was continued to January 28 and 29, 1980, and was finally completed on February 11, 1980.

Having heard the testimony of the witnesses and having considered all the evidence presented and being fully advised in the premises, the Board now makes its Findings of Fact, Conclusions of Law and Decision as follows:

FINDINGS OF FACT

1. On September 17, 1979, Respondent, Alton Clark Bingham, was served with a copy of the Complaint and Order to Show Cause and the Notice of Hearing in this matter, and thereafter Respondent personally appeared with his counsel at the time and place set for such hearing.

2. On February 26, 1966, Complainant granted Respondent a Certificate No. 226, to practice as a Certified Public Accountant in the State of Nevada, and an annual permit to

practice was issued to said Respondent.

3. Respondent's Certified Public Accountants' Certificate No. 226 and annual permit to practice issued by the Nevada State Board of Accountancy are still issued and presently in full force and effect.

4. During the Respondent's period of employment at the Southpoint Nevada Club, he held the title of controller and general manager. His title and authority, during the term of his employment, was subordinate only to the owner of the Southpoint Nevada Club and included supervision over, among other things, the accounting department, office and cage operation, vault operation, hotel and kitchen. Respondent would approve an extension of credit for gambling, by the use of markers, by application of his initials within a circle, on the marker document. Respondent would issue markers from the vault and transfer the markers to the cage area in exchange for currency. Access to the vault, and therefore, access to substantial sums of money, was granted to the Respondent.

The duties and responsibilities of the controller/general manager include the adherence to good internal accounting and administrative controls. Certified Public Accountants are specifically trained and knowledgeable in the application of internal accounting control and the effect it has on the safeguarding of assets. Segregation of duties, execution of responsibilities in accordance with management directions and establishment of checks and balances all fall within the purview of internal accounting control. The controller/general manager in gaming establishments is responsible for the adherence to and compliance with the rules and regulations of the Nevada Gaming Commission and State Gaming Control Board.

5. During his period of employment at the Southpoint Nevada Club, the Respondent did engage in the following acts discreditable to the public accounting profession under NRS 628.390(11) and which are in violation of NRS 628.390(4), violation of a rule of professional conduct promulgated by the Board:

A. Received \$2,000 currency in exchange for a marker without the debtor being present. The marker ultimately was determined to be fraudulent.

B. Between January 12, 1978 and March 7, 1978, participated in the embezzlement of various funds from the Southpoint Nevada Club.

C. Failed to exercise due diligence in the adherence to acceptable internal accounting controls. Funds were transferred between the cages, vault and office drawer in exchange for markers and hold checks. Accountability, control and the safeguarding of Southpoint Nevada Club cash was allowed to deteriorate to the point of non-existence.

D. Failed to adhere to the written and diagrammatic system of control submitted to the Gaming Control Board. Violated the granting of credit procedures as established by Regulation 6 by issuing markers out of the cage and vault.

E. Participated in the collection of the Seekins marker by the transfer of real estate from Mr. Seekins to the owner of the Southpoint Nevada Club and the substitution of the owner's markers for those of Mr. Seekins. The transactions effected were without apparent regard to the Federal and State tax regulations on the exchange, or the possible depletion of company resources.

F. Admitted to two persons that he had embezzled funds by the use of markers and stated to them that he felt

that he owed Mr. Jenkins in the neighborhood of \$50,000 to \$55,000 as a result of the embezzlements.

G. Admitted that he forged the signature of Mr. Jenkins on automobile leases, checks and other documents.

6. Rule 5.01 of the Rules of Professional Conduct of the Board provides:

A permit holder shall not commit an act discreditable to the profession.

7. NRS 628.390 provides in part as follows:

After notice and hearing . . . the board may revoke, or may suspend for a period not to exceed 3 years, any certificate . . . or may censure the holder of any such permit, for any one or any combination of the following causes:

4. Violation of a rule of professional conduct promulgated by the Board under the authority granted by this chapter.

CONCLUSIONS OF LAW

1. Respondent was given due notice and opportunity to be heard as provided by statute, and following such notice and hearing the Board is convinced that Respondent did engage in acts discreditable to the profession when he:

A. Accepted \$2,000 in exchange for a marker without the customer being present, such marker subsequently determined to be fraudulent;

B. Participated in the embezzlement of various funds from the Southpoint Nevada Club;

C. Failed to exercise due diligence in the adherence

to internal controls and the Regulation 6 submission to the Gaming Control Board;

D. Participated in the settlement of the outstanding Seekins marker;

E. Admitted forging signatures on automobile leases, checks and other documents;

and that as a consequence of such conduct, Respondent's certificate to practice public accounting ought to be revoked.

DECISION

1. The Certificate No. 226, issued to Respondent February 26, 1966, authorizing him to practice certified public accounting in the State of Nevada is hereby revoked.

DONE AND DATED: This 26th day of June, 1980.

NEVADA STATE BOARD OF ACCOUNTANCY

By:

/s/ John F. Rhodes, Presiding Member

/s/ Lola F. Farmer, Member

/s/ Merlin J. Jones, Member

/s/ William R. Ernst, Member

/s/ Mary O. Knapp, Member

CERTIFICATE OF SERVICE BY MAILING

It is hereby certified that three true and correct copies of the foregoing Supplementary Appendix to Petition for a Writ of Certiorari to the Supreme Court of the State of Nevada were mailed, postage prepaid, on the 17th day of February, 1984, to BRYAN McKAY, Attorney General, Heroes Memorial Building, Carson City, Nevada 89701, and MELVIN BRUNETTI, ESQ., 402 North Division Street, Carson City, Nevada 89701.